ing Notice was filed in the office of the Clerk of said Court, in words and figures following, to-wit:

[fol. 9] IN CIRCUIT COURT OF COOK COUNTY

[Title omitted]

CERTIFICATE OF MAILING NOTICE—Filed July 28, 1930

I, Thomas O. Wallace, Clerk of the Circuit Court of Cook County, in and for said County, in the State of Illinois, do hereby certify that on the 28th day of July, A. D. 1930, I sent by mail, postage prepaid, a Notice, a copy of which is hereto attached, marked "Exhibit A," to the following defendants, and addressed as follows:

One Copy Ex. A to Joe Thomas, 1614 Fifth Avenue, Chicago Heights, Illinois.

One Copy Ex. A. to J. W. Horwitz, 10 So. La Salle St., Chicago, Illinois, Attorney for Joe Thomas.

One Copy Ex. A to E. E. Cohen, 10 So. La Salle St., Chicago, Illinois, Attorney for Joe Thomas.

One Copy Ex. B to Industrial Commission of Illinois, 205 W. Wacker Drive, Chicago, Ill.

Thomas O. Wallace, Clerk.

Exhibit "A."

Compared.

[Endorsed:] No. B-203,860. Circuit Court of Cook County. Joe Thomas vs. Chicago & Eastern Illinois R. R. Co. Certificate of Mailing Notice. Registered Jul. 29, 1930. Thomas O. Wallace, Clerk Circuit Court, Deputy I. Filed 1930, Jul. 28, A. M. 11:40. Thomas O. Wallace, Clerk, per —— ——. Edward W. Rawlins, Attorney for Defendant, 105 S. La Salle St. Central 8295.

[fol. 10] EXHIBIT "A"

Scire Facias under Workmen's Compensation Act

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

Whereas, at a session of the Industrial Commission, held in the County of Cook and State of Illinois, to-wit: on the

8th day of July, A. D. 1930, before the said Industrial Commission then sitting in the City of Chicago, in said County, a decision or award was rendered by said Commission in a certain action or proceeding then pending before said Industrial Commission against Chicago & Eastern Illinois R. R. Co. and in favor of Joe Thomas, we do therefore hereby command you that you summon the said Joe Thomas, if he shall be found in your County, personally to be and appear before the said Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in the City of Chicago, in the said Cook County, on the third Monday of August, A. D. 1930, then and there to show cause, if any he have or can show, why the said decision or award should not be reversed and set aside; and further to do and receive what shall then and there be adjudged by our said ourt in the premises.

And have you then and there this Writ, with your return thereon in what manner you shall have executed the same.

Witness Thomas O. Wallace, Clerk of our said Court, and the Seal thereof, at Chicago, in said County, this 28th day of July, A. D. 1930.

Thomas O. Wallace, Clerk. (Seal.)

Compared.

[Endorsed:] Klarkowski. B-203,860. Circuit Court of Cook County, —— Term, A. D. 19—. Joe Thomas vs. Industrial Commission of Illinois and Chicago & Eastern Illinois R. R. Co. Scire facias under Workmen's Compensation Act. Filed 1930, July 28, A. M. 11:36. Thomas O. Wallace, per V. Registered July 28, 1930. Thomas O. Wallace, Clerk Circuit Court. Edward W. Rawlins, Attorney, 105 So. La Salle St. Central 8295.

[fols. 11 & 12] EXHIBIT "B"

Writ of Certiorari under Workmen's Compensation Act

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to Industrial Commission, Greeting:

Whereas, it has been represented to our Circuit Court of Cook County, by the Præcipe or Petition of Chicago & East-

ern Illinois R. R. Co., filed in said Court, that on the 8th day of July, A. D. 1930, in a certain suit or proceeding, then pending before you, a decision or award has been rendered by you in favor of Joe Thomas and against said Chicago & Eastern Illinois R. R. Co. for $18.00 per week for a period of 27 2/7 weeks and $18.00 per week for a period of 94 1/12 weeks;

And the said Chicago & Eastern Illinois R. R. Co. having filed a Præcipe or Petition for a Writ of Certiorari, and we being willing that said cause should be brought before our said Circuit Court;

Do therefore command you that, without delay, you certify to our said Circuit Court of Cook County, a transcript of the decision or award and other proceedings had before you in said cause on or before the third Monday of August, A. D. 1930.

To the Sheriff of said County to execute and return in due form of law.

Witness, Thomas O. Wallace, Clerk of our said Circuit Court of Cook County, and the Seal of said Court, at Chicago, this 28th day of July, A. D. 1930.

Thomas O. Wallace, Clerk.

Compared.

[Endorsed:] Klarkowski. B-203,860. Circuit Court of Cook County, —— Term, A. D. 192-. Joe Thomas vs. Industrial Commission and Chicago & Eastern Illinois R. R. Co. Writ of Certiorari. Filed 1930, July 28, a. m. 11:36. Thomas O. Wallace, per V. Registered July 28, 1930. Thomas O. Wallace, Clerk Circuit Court. Edward W. Rawlins, Attorney for Plaintiff, 105 So. La Salle St., Central 8295; Attorney for the Chicago & Eastern Illinois R. R. Co.

[fols. 13 & 14] Bond on certiorari for $2,400, approved and filed July 28, 1930, omitted in printing.

[fols. 15 & 16] Appearance of counsel, filed August 18, 1930, omitted in printing.

[fol. 17] IN CIRCUIT COURT OF COOK COUNTY

Industrial Commission, 158,174. Circuit Court, #B203,860

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent and Petitioner,

vs.

JOE THOMAS, Applicant, and INDUSTRIAL COMMISSION OF Illinois, Peter Grieve, Jr., Clarence S. Piggott, H. H. Willoughby, C. A. Pense, and Charles F. Wills, Members of said Commission, and Walter F. Rohm, Secretary, Defendants

[File endorsement omitted.]

Compared.

[fols. 18 & 18a] **Proceedings Before Industrial Commission**—Filed Oct. 23, 1930

RETURN TO WRIT OF CERTIORARI

The Industrial Commission of Illinois, Peter Grieve, Jr., Clarence S. Piggott, H. H. Willoughby, C. A. Pense, and Charles F. Wills, members of said Commission, in response and obedience to the Writ of Certiorari in this cause issued commanding them to certify to said Court a transcript of the d-cision and award of the Arbitrator and a transcript of all other proceedings had before them in said cause, do make return thereto and say that the following and no other proceedings were had in said cause:

[fols. 19 & 20] [File endorsement omitted]

STATE OF ILLINOIS:

Industrial Commission, 205 W. Wacker Drive, Chicago, Ill.

APPLICATION FOR ADJUSTMENT OF CLAIM—Filed Jan. 18, 1930

Notice of Disputed Claim and Memorandum of Names and Addresses

(This form to be filed in duplicate)

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

The petition of the undersigned respectfully shows to this Honorable Commission the following, to-wit:

1. That on the 15th day of July, 1929, (Name of person injured) Joe Thomas was injured by reason of an accident arising out of and in the course of his employment by the above named (Name of Employer) Chicago & Eastern Illinois R. R. Co.; that your petitioner is the person injured.

2. That a dispute has arisen with respect to the compensation to be paid for the disability resulting from such injury, and the general nature of the dispute is:

(a) The employer denies liability for the compensation provided for in the Workmen's Compensation Act.

(b) A dispute exists concerning the amount and duration of the compensation payable.

3. The following particulars relative to this application are herewith given:

(a) Name of injured employee: Joe Thomas. Address: 1614–5th Ave., Chicago Heights.

(b) Name of employer: Chicago & Eastern Illinois R. R. Co. Place of business and address: 332 So. Michigan Ave.

(c) Place of accident: In Roundhouse.

(d) Nature of work upon which injured was engaged at time of accident and how caused: Caught right hand in gear machine, amputating fingers and involving hand.

(e) State whether medical, surgical and hospital treatment were furnished by employer and, if so, to what extent; amount expended for above purposes and period treated. Yes.

(f) Earnings of employee during year preceding injury, If employed by the same employer; if not so employed give earnings of such employees in the same class or grade. 45¢ per hour.

(g) Compensation payments received from employer: $—— account medical care and attendance; $—— per week for —— weeks' temporary total disability; $—— per week for —— weeks' partial disability; $—— account of other items, here enumerated, ——.

4. Additional amount claimed as compensation: (a) $—— account medical care and attendance; (b) $—— per

week for —— weeks' temporary total disability; (c) $—— for serious and permanent disfigurement to ——; (d) $—— per week for —— weeks' partial disability; (e) $18.00 per week for 170 weeks' loss or loss of use of right hand under paragraph (e) of section 8.

(f) $—— per week for complete and permanent disability, including pension provided for under paragraph (f) of section 8.

5. (a) Date of service on employer of notice of accident: Same day. (b) If notice not served within thirty days, did any agent of employer have knowledge of the facts and circumstances of the accident? ——.

6. Age of petitioner at the time of the injury: 50. Give names, ages and addresses of all children under the age of sixteen years at the time of the injury. ~~Name: Frost.~~ Address: ——. ~~Age: 12.~~ Name: Doc. Address: ——. Age: 10. Name: Julia Emma. Address: ——. Age: 8.

7. Your petitioner prays that the Industrial Commission appoint an arbitrator to make such inquiries and investigations as he shall deem necessary, and that a day be appointed by said Industrial Commission and the time and place thereof fixed, where said arbitrator may hear such proper evidence as the parties hereto may submit, and that an award and decision may be made, in conformity with the statute in such case made and provided.

The undersigned requests that all notices of proceedings in the above entitled matter be served personally or by registered mail upon the party whose name and address follows as attorney for petitioner; if no attorney's name appears, then to the name and address of the undersigned.

Dated this 17th day of January, 1930.

(Signed by mark) Joe (X his mark) Thomas, Address: 1614 5th Avenue, Chicago Heights. J. W. Horwitz, Attorney for Petitioner, Address: 10 S. LaSalle Street.

——

[fols. 21 & 22] To employer:

If you carry insurance covering this accident, forward all these papers to your insurance company at once.

Form 77

NOTICE OF FILING OF CLAIM—Jan. 27, 1930

Before the Industrial Commission of Illinois, 205 W. Wacker Drive, Chicago, Ill.

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

To Res., thru A. R. Swanson, 724-332 So. Michigan Ave., Chicago, Ill.:

You are hereby notified that application for adjustment of claim in the above entitled matter was filed with said Commission on the 18th day of January, 1930; that paragraph (a) of Section 19 of the Workmen's Compensation Act (as amended) provides that "if the compensation claimed is for a partial permanent or total permanent incapacity or for death," you may elect to have said matter determined by a Committee of Arbitration by filing with said Commission your "election in writing within five days" of the receipt of this notice and by depositing with said Commission with said election the sum of twenty dollars to be paid by said Commission to the arbitrators selected by the parties hereto as compensation for their services as such arbitrators. And that, in case you do not make such election or fail to deposit the sum of twenty dollars with such election; or, in case the compensation claimed is not for "partial permanent or total permanent incapacity or for death," an arbitrator designated by said Commission shall determine said matter.

Form 33 (Memorandum of Names and Addresses for Service of Notices) is also enclosed herewith, and should be filled out and filed with said Commission in said matter at once.

Dated this 27th day of January, 1930.

Industrial Commission of Illinois, by Walter F. Rohm, Secretary. (Seal Industrial Commission Dept. of Labor, Illinois.)

Notice of Hearing

You are hereby notified that a hearing in the above entitled matter will be held on the 24th day of February, 1930, at 1:30 o'clock P. M., at 205 W. Wacker Drive, in the City of Chicago, Illinois, before the arbitrator designated by the Industrial Commisison of Illinois.

Dated this 27th day of January, 1930.

Industrial Commission of Illinois. Walter F. Rohm, Secretary.

[fols. 23 & 24] BEFORE THE ARBITRATOR OF THE INDUSTRIAL COMMISSION OF ILLINOIS

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

NOTICE OF HEARING—Jan. 27, 1930

To Pet., thru J. W. Hortwitz, 10 S. La Salle St., Chicago, Ill.; Res., thru A. R. Swanson, 724-332 So. Michigan Ave., Chicago, Ill.:

You are hereby notified that a hearing in the above entitled matter will be held on the 24th day of February, 1930, at 1:30 o'clock P. M., at 205 W. Wacker Drive, in the City of Chicago, Illinois, *Illinois*, before the arbitrator designated by the Industrial Commission of Illinois.

Dated this 27th day of January, 1930.

Industrial Commission of Illinois. Walter F. Rohm, Secretary, 205 W. Wacker Drive, Chicago, Ill.

New address: 205 W. Wacker Drive, Chicago, Illinois.

[fol. 25] BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

No. 158,174

JOE THOMAS

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co.

Statement of Evidence Before Arbitrator—Filed April 18, 1930.

CAPTION

Be it remembered that on the 24th day of February, 1930, the above entitled cause came up for hearing before Miss Hariett Reid, one of the Arbitrators of said Commission, in one of the hearing rooms of said Commission at 205 West Wacker Drive, Chicago; whereupon the following proceedings were had:

Appearances:

Mr. J. W. Horwitz and Mr. B. E. Cohen, 10 S. La Salle St., Chicago, for the Petitioner.

Mr. E. W. Rawlins, 105 S. La Salle St., Chicago, for the Respondent.

P. C. Rennwald, Reporter.

[File endorsement omitted.]

[fol. 26] STIPULATION AS TO FACTS

The Arbitrator: It is stipulated and agreed by and between the parties that on the 15th day of July, 1929, said petitioner was an employe of said respondent; that said petitioner sustained accidental injuries on that date; that notice of the accidental injury was given said respondent; that claim for compensation was made within the proper time; that the average weekly wage during the year next preceding the injury was $28.35, that the respondent has furnished the necessary first-aid, and medical services; that the questions in dispute are, whether or not this injury sus-

tained on the 15th of July, 1929, arose out of and in the course of his employment and whether at that particular time the employe and the employer were operating under the provisions of the Workmen's Compensation Act or the Federal Employers' Liability Act, whether there is any period of temporary total incapacity for work; the nature and extent of any permanent disability; whether respondent is liable under the provisions of the Workmen's Compensation Act. Can you make the usual stipulation about extension of time to the reporter in case of appeal?

Mr. Horwitz: Yes.

Mr. Rawlins: Yes.

The Arbitrator: The witnesses be sworn.

[fol. 27] (Whereupon the witnesses were duly sworn.)

Whereupon JOE THOMAS, the petitioner, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Horwitz:

Q. What is your name?
A. Joe Thomas.

The Arbitrator: You must talk up. We must hear you. Talk right up.

Mr. Horwitz:

Q. Where do you live?
A. Chicago Heights, Illinois.
Q. What address?
A. 1614 Fifth Avenue.
Q. On the 15th of July 1929, whom were you employed by?
A. C. & E. I.
Q. By that you mean the C. & E. I. Railroad Company?
A. Yes.
Q. Where is that at?
A. Chicago Heights, Illinois.
Q. How long have you been with them?
[fol. 28] A. I have been ten years.

The Arbitrator: Keep your voice right up, Mr. Thomas; talk right out.

Mr. Horwitz:

Q. You haven't been with the same company for ten years—they were taken over recently?
A. They were taken over recently.
Q. The last two years?
A. Two years.
Q. And you have been doing the same kind of work?
A. The same kind of work.
Q. Now, what happened to you on July 15, 1929, while in the employ of this railroad company.
A. I got hurt.
Q. Just tell what happened.
A. I got hurt working on a machine, electric motor and I was oiling an electric motor underneath.
Q. Is this motor a stationary motor?
A. A stationary motor.
Q. How long has that motor been there?
A. It has been there longer than I can recollect.
Q. Longer than you can recollect?
A. Sure.
Q. Was it bolted on to the floor?
[fol. 29] A. Screwed onto the floor—bolted to the floor.
Q. How big is this motor?
A. Oh, it is about so large, I guess.

Mr. Horwitz: Indicating two and a half feet long, would you say?
A. A little better than that. And about that high (indicating).

The Arbitrator: Indicating about three and a half to four feet high.
Mr. Horwitz: Yes.

Q. And what was this motor used for?
A. To hoist coal over into the bin.
Q. Into the bin?
A. Yes.
Q. And is that a stationary bin?
A. Stationary bin.
Q. And how often have you done this work?
A. How often have I done this work?
Q. Yes, within—well, during a week how often did you do that?

A. Every day.
Q. Every day?
A. Every day.
Q. Now, what happened—how did you get your hand injured?
[fol. 30] A. I was oiling.
Mr. Horwitz: Yes. And is this run by—what is it run by, gears?
A. Gears; gears.
Q. What happened—tell us?
A. As I was turning—I was oiling and it snatched my hand right in—arm right in.
Q. You got your hand snatched in?
A. Yes.
Q. That is the right hand?
A. Yes.

Mr. Horwitz: Right hand.

Q. And what happened to you there then as it was snatched in?
A. It was hurt.
Q. It was hurt; all right. Did any part of your hand—right hand remain in the machine or did you get it all back?
A. Sure.

The Arbitrator: Let's see.

Q. Was the thumb and these fingers—was it cut—was this cut off by the machine or did the doctor operate?
A. Cut off with the machine.

The Arbitrator: Let the record show that the right thumb has just one phalange, the proximal phalange, the distal phalange being absent; that the index finger of the [fol. 31] right hand is also lacking the distal phalange. The middle phalange of the right hand is missing.

Mr. Rawlins: The distal phalange.
The Arbitrator: The distal phalange. The middle and ring fingers are there in their entirety.

Mr. Horwitz:

Q. Now, did you go to a doctor?
A. Yes.

Q. And how long have you been under the treatment of a doctor since the time of the accident?

A. My first doctor?

Q. Well, all the doctors.

A. Oh, about——

Q. Up until when?

A. —four months.

Q. You were under treatment of doctors about four months?

A. Four months.

Q. Now, have you ever had an injury to that hand before?

A. No, sir.

Q. Well, what is the trouble with your hand now, what do you complain of?

A. Stiff. I can't use it.

Q. Well, can you close your hand?

A. I can't close my hand any more than that (demonstrating).

[fol. 32] The Arbitrator: Find out if he had any infection in the hand.

Mr. Horwitz:

Q. What kind of treatment did the doctor give you?

A. What do you mean?

Q. If you know?

The Arbitrator:

Q. What did he do for you?

A. He dressed it and took dead bone out of this finger.

Q. Out of the index finger?

A. Yes.

Q. Was there pus coming out of the hand?

A. Yes.

Q. Which finger?

A. Both of them.

Q. The index and middle finger?

A. Yes.

Q. Did they have any drains in there——

A. Any drains?

Q. —so that pus come out?

A. No.

The Arbitrator: Ask about the children?
Mr. Horwitz: Yes, I will go into that.

Q. You had Dr. Bohart take care of You?
A. That was my last doctor.
Q. When did he discharge you,—how many weeks since [fol. 33] he discharged you?
A. Well, I could not tell, but I have got his ticket in my pocket.

Mr. Horwitz:

Q. It was on January 22?
A. I can't tell right now. Wait a minute. I will show you in a few minutes.

Mr. Rawlins: Dr. Bohart is here and he can tell.
Mr. Horwitz: I just want to get the dates on that.

(At this point the witness handed a paper to the Arbitrator.)

The Arbitrator: It bears the date of January 22, 1930.
Mr. Horwitz: All right. That is the date I want to have fixed as the termination of the temporary.

Q. Now, are you married, Mr. Thomas?
A. Yes, sir.
Q. How many times have you been married?
A. This only makes twice.
Q. And have you any children?
A. Yes, sir.
Q. By which marriage?
A. My first wife.
Q. How many children have you?
A. Five.
[fol. 34] Mr. Horwitz: Five—How many under the age of sixteen?
A. Three.
Q. What are their names?
A. Frost.
Q. How old is Frost about?
A. He is about thirteen.
Q. And who else?
A. Doc.

Q. How old is Doc?
A. He is about twelve.
Q. And how old is the next one, what is the name?
A. June Emma. She is my girl.
Q. How old?
A. Ten.
Q. What is the name of your wife?
A. Minnie Belle.
Q. Where is she now?
A. She is down South.
Q. Are the children with you?
A. No, I haven't got any with me. They are with her.
Q. Have you seen them lately?
A. I haven't seen them about a year.
Q. Do you support them?
A. Sure.
Q. Sending them money right along?
A. Right along.

—. ——.

[fol. 35] A. Aberdeen, Mississippi.

Mr. Horwitz:

Q. Who are they with?
A. With their mother.
Q. Now, in the work that you did for the C. & E. I. Railway what other duties did you have to do there?
A. Outside of hoisting coal?
Q. Outside of taking care of the engine and hoisting coal?
A. Taking care of the coal chute, roundhouse and cinder pit.
Q. When were you,—describe your employment, whether mechanic or laborer?
A. Laborer.
Q. Now, in this oiling of the machine—I withdraw that question. This coal chute that you have described which was near to the machine or coal bin—was the coal bin right near the machine?
A. Setting right beside of it.
Q. You dumped the coal into that bin?
A. Yes.
Q. Who did the dumping of the coal?

A. Common laborer.

Q. After the bin was loaded with coal what would you do to get the coal out of the bin?

A. Get the coal out of the bin, you hoist it.

[fol. 36] Mr. Horwitz: Into what?

A. Into the coal bin.

Q. Of the engine?

A. No.

Q. Into another coal bin?

A. Into another coal bin.

Q. Didn't you have some engines come into this place where you worked?

A. Yes.

Q. Where was that?

A. The roundhouse.

Q. You had some engines come there?

A. Switch engines.

Q. What are they, switch engines?

A. Yes.

Q. Were those small switch engines or large?

A. Small.

Q. You never—did you have anything to do with these switch engines?

A. Well, I watered them and coaled them up.

Q. How often would you do that?

A. Once a day.

Q. What time of the day?

A. Well, from two thirty to three thirty.

Q. At night or morning?

[fol. 37] A. In the morning. In the evening—in the afternoon.

Mr. Horwitz:

Q. Was that after the engines were through with the run or before they would go out on a run?

A. When the accident happened?

Q. No, no, no. I mean when would you put coal and water in the engines—was that after they came in from a run or *or* going out?

A. After they came in.

Q. And how long a time after you watered them and coaled them would they go out on a run?

A. Well, from three thirty until six—something like that.

Q. Now, you saw these little engines every day?

A. Every day.

Q. Every day. And what were they used for, if you know?

A. What were they used for?

Q. Yes.

A. Pulling freight out of those factories and pulling in freight; carrying out freight, and carrying in freight.

Q. Which factories were they?

A. Chemical, manganese.

Q. Where were they located, around Chicago?

A. Around Chicago Heights.

Q. You had nothing to do with freight, packages or any-[fol. 38] thing of that kind?

A. No.

Mr. Horwitz:

Q. Your duties were to take care of this machine, stationary machine, put coal into the bins and take it out and water these little engines that would run around Chicago, and keep them clean?

A. Yes.

Q. Would you ever use a broom?

A. Sure. I used a broom every day.

Q. For what?

A. Sweeping the roundhouse out, cleaning up.

Q. Was this one of the cards that was issued to you?

A. Issued to me.

Q. 1929—I ask that be introduced in evidence as——

Mr. Rawlins: What is it for?

(Whereupon the paper was handed to Counsel for the respondent.)

Mr. Horwitz: Petitioner's Exhibit 1.

Mr. Rawlins: I have no particular objection. I don't think it is material.

Mr. Horwitz: The only thing I want to show is that he was a laborer.

The Arbitrator: Can't you stipulate that he is a laborer if that is all there is to it?

[fol. 39] Mr. Rawlins: I don't deny that he worked for us; that whatever he did speaks for itself.

The Arbitrator: It isn't necessary to have that particular card.

Mr. Horwitz:

Q. Now on this particular day that you were oiling this stationary machine was there any hoisting, did you do any hoisting of coal—or was anybody besides you working around this machine?

A. Nobody but myself.

Q. There was no coal being put in?

A. No.

Q. And no coal taken out?

A. And no coal taken out.

Mr. Horwitz: I think that is all.

Cross-examination.

By Mr. Rawlins:

Q. Mr. Thomas, this morning that you were doing—on the day you got hurt and at the immediate time you got hurt, was you hoisting coal from a bin down on the ground up into the chute?

A. Yes, sir.

Q. In other words, this motor or engine that you were operating was an engine which you operated for the pur-

[fol. 40] pose of keeping the coal chute filled with coal?

A. Yes.

Q. And the coal from that chute was used to put in engines that worked in and about the yards at Chicago Heights?

A. Yes.

Q. And that was the constant use to which that was put, every day you had to keep that bin filled with coal?

A. Every day.

Q. And if the engines needed coal they would come up there and the coal would be dumped from overhead down into the engine?

A. Yes.

Q. And, at the immediate time that you were hurt, Mr. Thomas, you were actually engaged in hoisting coal from

the ground up the chute overhead, that is true, you were actually engaged in filling a bin up at the time you got hurt?

Mr. Horwitz: Just a minute. Did you understand what the word engaged means?

The Arbitrator: He means you were doing that.

Mr. Horwitz: The lawyer is asking you what you were doing at the time when you got hurt.

A. Oh, I was to hoist coal.

Mr. Rawlins:

Q. And the engine was running?

—. ——

[fol. 41] Mr. Cohen:

Q. Were you hoisting coal at that time when you got hurt—were you hoisting coal?

A. Sure I was.

Mr. Cohen: I don't think he understands the question.

Mr. Horwitz: No.

The Arbitrator: You better let the respondent continue with framing the questions again.

Mr. Rawlins:

Q. The work you were doing there was at this engine?

A. I was working with the motor.

Q. And that motor was the motor that was regularly used to hoist coal from the ground up into the chute overhead?

A. Overhead.

Q. And at the time the engine was running, wasn't it?

A. It was running.

Q. Was coal being hoist at the time or just running?

A. Just running.

Q. How long had it been running?

A. Just a few minutes.

Q. Just getting ready to start hoisting coal?

A. To start hoisting coal.

Q. After you started the engine running what was the next step that you would do to get the coal up?

[fol. 42] A. Well, going around, pulling down a door and filling my bucket, and I reached right over back here (indicating) and get my lever and putting her in gear and then the bucket would go up.

Mr. Rawlins:

Q. That is the way you filled the chute?
A. Yes.
Q. That was your regular work?
A. Yes.
Q. And that coal that you hoisted up into the chute was all used in these engines, wasn't it?
A. Yes, sir.
Q. Around the yard?
A. Around the yard.
Q. Switch engines?
A. Yes.
Q. They were engines that switched freight back and forth on the various tracks there at Chicago Heights?
A. Yes.
Q. That is, these engines would haul freight that comes from out of town to the plants of industries?

Mr. Cohen: If you know.

Mr. Rawlins:

Q. What did they do?
A. That is what they do.
Q. They would haul freight from different industries [fol. 43] around Chicago Heights out away from them as well as haul freight into them?
A. What do you mean?

The Arbirtrator: He means factories like the manganese and chemical that you spoke about, bringing freight in and out from them,—he calls them industries?
A. In and out.

Mr. Rawlins:

Q. That is what they were doing all the time every day?
A. Yes.
Q. There were other engines—there were some engines that switched around the C. & E. I. that also coaled up there?

A. Yes, that is right.

Q. That engine or those engines that were coming out of the C. & E. I. they worked further down south?

A. Yes.

Q. And that engine would coal at your chute?

A. Yes.

Q. And it did it all the time?

A. All the time.

Q. With reference to the work, this other work which was watering and coaling engines——

The Witness: Yes, sir.

[fol. 44] Mr. Rawlins: —now tell us what you did when you coaled the engines, how did you do that?

A. Well, in coaling those engines you get up on top.

Q. Would you run up to this chute yourself?

A. Sometimes I did and sometimes I didn't.

Q. But you would unload the coal from the chute into the engines?

A. That is right.

Q. Into the coal bin or whatever it was on the engine?

A. Yes.

Q. Into the coal tender?

A. Yes.

Q. That was a regular part of your duties?

A. Yes.

Q. Every day?

A. Every day.

Q. That is the same engine that you have been describing here?

A. Yes.

Q. In watering them where would you water them—how would you water them—what did you do?

A. On top and pull that chute down and open it.

Q. Where was this water, in the same place?

A. The same place.

Q. Who pumped the water up?

A. Who pumped it?

[fol. 45] Mr. Rawlins: Yes. How did the water get up into the tank?

A. There is an automatic valve.

Q. You didn't work that?

A. No.

Q. But you would tap the water or empty the water into the tank of the engine?

A. Yes.

Q. That was a regular part of your everyday work?

A. Yes, sir.

Q. This engine stands on the floor, doesn't it?

A. Yes.

Q. It is about three and a half feet high?

A. Just about.

Q. And the top of it all covered?

A. Yes.

Q. The gears on top are all covered over?

A. Yes. Of the engine?

Q. Yes. As you look at it from the top the gears are all covered gears.

The Witness: Repeat that again.

Mr. Rawlins:

Q. You know what gears are or cogwheels are?

A. Sure.

Q. The top of those was covered over with a guard?

Mr. Horwitz:

Q. There was a safety on?

A. On the engine?

[fol. 46] Mr. Rawlins: Yes. The gear wheels.

A. On top?

Q. Yes, the motor.

The Arbitrator: You see, we can't hear you unless you talk up. Speak right out. What was it you said?

A. I said, yes, it was covered on top.

Mr. Rawlins:

Q. How would you grease it, you reached down into the machine and came up under the cog-wheels?

A. The motor.

Q. Down under the motor?

A. Down under.

Q. You went way down and reached up?

A. No, it didn't go so very far down.
Q. Down to the part that was covered?
A. Underneath?

The Arbitrator: That is no answer, down underneath.

Mr. Rawlins:

Q. You were down underneath the motor?
A. Down underneath the motor.
Q. And underneath the guard that was on top?
A. No, there ain't any guard under.
A. The whole top is guarded?
A. Not all the way, not under here.
Q. No. You couldn't reach it if there was a guard on?
[fol. 47] A. If there was a guard there you couldn't have got to it.

Mr. Rawlins:

Q. But you had to reach underneath the guard to reach where you were?
A. No, right down underneath. There was a guard on top like this (indicating), just like a rainbow. I had to reach down underneath.
Q. What were you using—you were using pin grease?
A. Yes.
Q. How did you come to be using pin grease on that machine, that isn't what is used on that, is it?
A. What?
Q. Pin grease.
A. Well——
Q. How did you come to use that pin grease that day?
A. Because it lasted longer than other grease I put on.
Q. You had an oil can, didn't you?
A. No oil can.
Q. Didn't you have oil cans there—there are lots of them?
A. There are lots of them but I didn't have them around there.
Q. You are the one who would get the grease or oil?
A. Sure.
Q. You were the fellow who had charge of this motor?
[fol. 48] A. Yes, I had charge of it all right.

Mr. Rawlins:

Q. And you picked up the kind of grease you wanted?
A. The kind I needed.
Q. You could oil that from under without reaching up?
A. To put in pin grease?
Q. You wouldn't have to do that by using an oil can?
A. I didn't have any oil can at that time.
Q. I know, but there were plenty of oil cans in the roundhouse?
A. Yes, there are some there.
Q. This motor—now listen to me, Mr. Thomas.

The Witness: All right.

Mr. Rawlins:

Q. This motor and this coal chute where you placed this coal that was fixed there and had been in that same condition for a number of years?
A. So far back I can't recollect.
Q. Regular fixture?
A. Yes.
Q. And had been used all the time for coaling, getting coal into these engines that were switched around Chicago Heights that you have described—your answer is yes?
A. Yes.

[fol. 49] Mr. Rawlins:

Q. Now, about how many engines were there?
A. How many?
Q. Yes, about how many engines.
A. Well, there was five in all.
Q. Including the C. & E. I.?
A. Yes, sir.
Q. They worked there every day?
A. Every day.
Q. And those engines handled all the freight?
A. Yes.
Q. That is handled in those yards?
A. Yes, sir.

Mr. Rawlins: That is all.

Redirect examination.

By Mr. Horwitz:

Q. How big—how many bins were there or are there in this roundhouse?

A. How many bins?

Q. Yes.

A. Two.

Q. How large is a bin?

A. They are about——

Q. The size of this room or larger?

[fol. 50] A. Not quite as large; about half as large.

Mr. Horwitz:

Q. Each bin is the same size?

A. About half as large as this. One goes straight down and one goes like this (indicating).

Q. And who puts in the coal in the first bin when it comes into this roundhouse?

A. Laborer.

Q. You do or somebody else?

A. Somebody else.

Q. And these bins, the first is used for storage purposes?

A. Yes.

Q. And then you remove the coal from the first bin and put it into the second bin?

A. The second bin.

Q. And then if any of those little engines come you put it into the little engines?

A. Put it into the little engines.

Q. Are you familiar with the engines that go out of Chicago?

A. No, sir.

Q. How large are the engines—these little engines?

A. Well, they are pretty good sized little engines.

Q. About how big?

A. Oh, I could not tell. If I could see one I could show you.

[fol. 51] Mr. Horwitz:

Q. Compared to the large—you have seen freight engines or passenger engines?

A. About half—just about half is as near as I can come at it.

Q. There is no freight that comes into the roundhouse?

A. No.

Q. As a matter of fact you have never seen these engines——

Mr. Rawlins: Wait a minute. Ask him. You are arguing.

Mr. Horwitz: No, I am not.

Q. As a matter of fact you have never seen these engines haul any freight?

A. No.

Q. Now, in regard to this stationary engine that is used for hoisting—you mentioned that there was a rainbow guard on top of it?

A. On the top.

Q. Was a guard underneath it?

A. No.

Q. Should there have been a guard underneath?

Mr. Rawlins: I object and ask it be stricken.

The Arbitrator: Strike it.

Mr. Horwitz: Well——

The Arbitrator: He can state what there was but he can't state what there should be there. He can only state what he saw there.

[fol. 52] Mr. Horwitz:

Q. Well, is this condition underneath those engines a dangerous condition without a guard?

Mr. Rawlins: I object.

A. Yes, certainly it is.

The Arbitrator: That is a conclusion. You can have him describe——

Mr. Horwitz: Yes.

Mr. Rawlins: He knew it anyhow.

Mr. Horwitz: It doesn't make any difference.

Q. In order to oil this machine properly could it have been done from the top or did you have to go underneath when you oiled it?

A. I had to go underneath.

Mr. Rawlins: I object to it as a conclusion.

Mr. Horwitz:

Q. You had to go underneath?
A. Yes.

The Arbitrator: Just state how you did go.
Mr. Rawlins: I ask that it be stricken.
The Arbitrator: Strike it.

Mr. Horwitz:

Q. Describe how you would do it—you went underneath—assume the engine is standing on top——
The Witness: It is right here?
Mr. Horwitz: Yes.
[fol. 53] The Witness (continuing): My knees like this (indicating), on one knee, the knee-cap, and I had on a pair of gloves. I took it and stuck it under there.

Mr. Horwitz:

Q. How far underneath would you have to stick it under there?
A. Oh, about that far (indicating).

Mr. Horwitz: Indicating up to——
The Arbitrator: About six or eight inches above the wrist.

Mr. Horwitz:

Q. And you say there was no way you could reach the bottom?
A. No.
Q. From the top?
A. No.
Q. You mentioned something about a large engines, didn't you, that came there or was there?
A. There was a large engine that come in from the C. & E. I. that is the largest we got.
Q. Did that engine bring in any freight?
A. Any freight?
Q. Yes.

A. Well, sometimes she brings in freight from the main line, see?

Q. What do you mean sometimes?

A. Pushed up into the yard.

[fol. 54] Mr. Horwitz:

Q. When it comes into the roundhouse?

A. No.

Mr. Horwitz:

Q. Where you are working does it bring any freight?

A. No.

Q. How large is this roundhouse we are talking about?

A. Well, it is a pretty good sized little place. It holds five engines.

Q. Closed in?

A. She is closed in.

Q. So that, in other words, no,—you couldn't form a train,—an engine with a bunch or string of cars?

A. No, sir.

Q. In other words, this is what they call a switch yard?

A. Switching.

Mr. Horwitz: Unless the Arbitrator wants to ask something else——

The Arbitrator:

Q. Was this injury confined just to the index finger and middle finger?

A. Which?

Q. The injury, did it injure the little finger and the ring finger?

A. Stiffened, yes. They have been stiff since the injury.

Q. Did you have you- hand in a cast or splint?

[fol. 55] Mr. Horwitz:

Q. Did they put them in a cast?

The Arbitrator: Or splint?

Mr. Horwitz: A piece of wood or iron?

A. No, they didn't put no board there.

The Arbitrator:

Q. What use have you got of the little finger?

A. That is all, just like that (illustrating). That (demonstrating) is as far as I can get it unless I take my hand and bend it.

Q. Now, if you take your hand and bend the middle,—I mean,—strike that. The ring finger, this finger (indicating) and the little finger, can you bend them into the palm?

A. No.

Mr. Horwitz: Close your whole hand as much as possible.

A. That is as far as I can get it.

The Arbitrator: Now, he makes a fist and this little finger and the ring finger are about two inches from the palm.

Q. What about the motion of the hand or wrist?

Mr. Horwitz: I was going to go into that.

A. It is a little bit stiff.

Q. In regard to your right forearm, is there any trouble with that?

A. Stiff, all stiff in the arm.

Q. Is it smaller or larger than the other?

[fol. 56] A. Smaller.

Mr. Horwitz: Will you take your coat off?

(Whereupon the coat of the petitioner was removed.)

Mr. Horwitz:

Q. Can you do this (illustrating)?

A. I can't do it; it takes some time.

The Arbitrator:

Q. What about the movement of the arm in the elbow?

A. Stiff.

Mr. Horwitz: I have medical testimony.

The Arbitrator: Are you going to have medical?

Mr. Horwitz: Well, I am going to wait for the doctor.

The Arbitrator: You would expect nothing further just up until now.

Mr. Horwitz: There is atrophy.

The Arbitrator: It would be strange if there wasn't any.

Mr. Horwitz:

Q. How about bending it?

A. It is all stiff. The whole arm is stiff. Up in here it is stiff. Here (indicating) is where the big trouble is in my shoulder. That is where it is right in there (indicating).

The Arbitrator:

Q. When you got your hand in there did it pull you- arm and shoulder in?

A. It snatched me all plumb in.

Q. You felt you were snatched in from the shoulder?

A. Yes.

[fol. 57] The Arbitrator:

Q. There was pus, you say, came from the index finger and the middle finger,—did you- hand swell up above the wrist much?

A. Yes.

Q. How far up did it swell?

A. Well——

Q. How far up the arm?

A. To about there (indicating).

The Arbitrator: He is indicating about five inches from the bend in the wrist that the swelling extended.

Q. When the doc*o*tr was taking care of you up until January, was he paying particular attention to this index finger,—was that the one that the pus came out of?

A. Yes.

Q. Until just recently?

A. Yes.

The Arbitrator: Any other questions?

Mr. Rawlins: Yes.

Recross-examination.

By Mr. Rawlins:

Q. Mr. Thomas, will you listen to me so I can make it plain for you. This motor that you were working on, this

coal chute, and the apparatus, hoisting app-ratus, were all connected together?

[fol. 58] A. The motor?

Mr. Rawlins: The motor and the chute in which you dumped the coal, and the hoisting apparatus, were all together, weren't they?

A. Yes, they were all together.

Q. You talked about bins where the coal was dumped, what you mean by that is the coal brought in railroad trains, cars?

A. Yes.

Q. And dumped there on the ground or the bin right near the coal chute and you elevated it up to the top?

A. Yes.

Q. Now, you say you didn't see any of these engines haul freight when they came into the roundhouse, that is true?

A. Yes.

Q. They are disconnected from the train?

A. Which is?

Q. When the engines are pulled to the roundhouse they have been pulled off from the cars?

A. Yes.

Q. But you have seen these engines go back and forth on the track pulling cars?

A. Yes.

Q. Every day?

A. What?

[fol. 59] Mr. Rawlins:

Q. You have seen them pull loads of coal into industries?

A. Yes.

Q. You have seen them haul loads of coal and lumber into industries?

A. Yes.

Q. And all kinds of commodities you have seen them pull?

A. Yes.

Q. You have seen them pull loads of freight out of those industries?

Mr. Horwitz: Wait a minute.

The Arbitrator: Yes or no?

A. Yes.

Mr. Rawlins:

Q. And you say——

Mr. Horwitz: Just a minute. Pardon me. The man doesn't understand the word industries.

The Arbitrator: He understands all right. He understands him.

Mr. Horwitz: He has never been to one of those industries in his life, I venture to say.

Mr. Rawlins: You have seen them haul loaded cars back and forth on different tracks.

Mr. Horwitz: On the outside of the place of business?

Mr. Rawlins: I am asking these questions. If you think [fol. 60] they are wrong you can object.

Mr. Horwitz: Well, I object to the form of the question.

Mr. Rawlins:

Q. What did you see those engines pull, tell us?
A. Well, I have seen them pull loads outside.
Q. Outside, where?
A. Freight on the outside.
Q. What do you mean by outside?
A. On the outside tracks.
Q. What about the inside tracks?
A. In the yard coming on the inside track.
Q. What do you mean by inside?
A. That comes into my roundhouse.
Q. The outside tracks are the tracks which lead to the industries, you mean by that that tracks that lead into the business places in Chicago Heights?
A. Yes.
Q. And the C. & E. I. engines were doing the running?
A. The big ones?
Q. Yes.

Mr. Horwitz: If you know.

A. Well, it comes over to our roundhouse.

Mr. Rawlins:

Q. What have you seen it do?
[fol. 61] A. Well, I have seen them back in some freight, something like that.

Mr. Rawlins:

Q. Often, haven't you?
A. Pretty often.

Mr. Rawlins: That is all.

Q. How far is the coal chute from the roundhouse?
A. Well, it is about fifty or sixty yards, maybe a hundred right around there,—well, I will say about seventy-five.
Q. And that is entirely separated from the roundhouse?
A. Separated.

Redirect examination.

By Mr. Horwitz:

Q. Thomas, how many hours did you—do you put in at work?
A. In the roundhouse?
Q. Yes.
A. Eight hours.
Q. And do you work outside of the roundhouse?
A. I take care of the office.
Q. You have other duties then?
A. I have other duties.
Q. What are your duties in the office?
A. Cleaning up, sweeping up, dusting up.
Q. Where is the office at?
A. Right on this side (indicating).

[fol. 62] Mr. Horwitz:

Q. How many hours did you work in the office?
A. About an hour and a half.
Q. So that, in other words, you worked about nine and a half hours?
A. Yes.
Q. Do you- duties take you a mile away from your roundhouse?
A. No.
Q. Did you ever go a mile away from there?
A. No, sir.
Q. Have you ever been over to the industries?
A. No, sir.
Q. Now, then, when that little engine or those five engines that you are talking about leave the roundhouse do you know where they are going?

A. No, but right around the town.
Q. But you don't know where?
A. No.
Q. Unless somebody else told you?
A. Unless somebody tells me, that is all.
Q. And do you know what kind of freight or goods these little engines haul?
A. No.
Q. Do you know where they go?
A. No.
Q. In other words, all you know is your roundhouse work?
[fol. 63] A. That is all, roundhouse work?

Mr. Horwitz: That is all.
Mr. Ralins: That is all.

(Witness excused.)

Mr. Horwitz: We are expecting our doctor here any minute.
Mr. Rawlins: All right.
Mr. Horwitz: Unless we can possibly agree.
Mr. Rawlins: We can put the doctor on when he comes. And we can put on our case.
The Arbitrator: All right. This is the respondent's case then.

Whereupon B. S. Lottinville was called as a witness in behalf of the respondent and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rawlins:

Q. Will you please state your name?
A. B. S. Lottinville.
Q. Where do you live?
A. Chicago Heights.

[fol. 64] Mr. Rawlins:

Q. What is your business?
A. General agent of the Chicago Heights Terminal Transfer Railroad Company.

Q. As general agent what are your duties?

A. I have supervision of the handling of traffic and general work of the terminal.

Q. That is by that you mean, if I get it right, you are the man of the Chicago Heights Terminal Transfer Company that has the management or supervision of the traffic?

A. Yes, contract.

Q. By contract you mean?

A. Contract with the public and the carriers.

Q. Do you know Mr. Thomas here?

A. Yes, sir.

Q. Do you remember the time he got hurt?

A. Yes, sir.

Q. What was his job?

A. Well, he was a laborer at the roundhouse, having the care of engines, watering and taking care of the cinder pit, coaling engines, unloading coal from cars into the pit and from the pit he would elevate coal into the coal bins.

Q. In doing that would *be* use this motor that was described here?

[fol. 65] A. Yes, sir.

Mr. Rawlins:

Q. Describe that motor and that coal bin, just what it was?

A. The coal bin is an upright structure that holds about one hundred tons of coal. It is right adjacent to a track, called the coal track from which the coal is unloaded from the cars into the pit, and the motor is located in a small house adjacent to the coal bin and it is used in hoisting coal from the pit into the coal bin from which the engines are supplied.

Q. That is a permanent structure?

A. That is a permanent structure.

Q. And has been there how long?

A. Several years, as long as I know.

Q. Now, the coal that is hoisted up into that coal bin that you have described was used for coaling engines?

A. Yes.

Q. And what are the engines used for?

A. Terminal engines, Chicago Heights terminal engines, switch engines, and C. & E. I. switch engines.

Q. Now, these Chicago Heights Terminal engines what are they used for?

A. For switching freight coming from various lines, the [fol. 66] Chicago, Milwaukee & St. Paul, the B. & C. T. Railroad, the Michigan Central, the C. & E. I.

Mr. Rawlins:

Q. That is, they switch freight from them to——

The Witness: Various industries on the Chicago Heights Terminal Railroad and switch cars loaded with freight coming from these industries going out bound beyond.

Q. What are some of those industries?

A. The American Manganese Steel.

Mr. Horwitz: I object to that part so far as our claim is concerned.

Mr. Rawlins: It is a question of what is the character of the freight that is moved.

Mr. Horwitz: Well, we are not interested. We have no freight here involved. All we have involved is the roundhouse, and the roundhouse has nothing to do with freight. He so testified. You have no right to go into the question of any freight. We are not interested at all. No question here as to any freight. The testimony clearly stated that he was a laborer that put coal into the little engines that come into the roundhouse.

The Arbitrator: Let us find out the character of these engines.

Mr. Horwitz: Well, the character, he says, is that of [fol. 67] switch engines.

The Arbitrator: They have to do something.

Mr. Horwitz: That is what they are doing. They are switch engines. That is our testimony.

Mr. Rawlins: What are they switching? That is what we want to know.

Mr. Horwitz: We are not interested in what they are switching. We have cases directly in point.

The Arbitrator: Well, I would like to see them.

The Arbitrator: This is off the record.

(Off the record.)

Mr. Horwitz: I made an objection for the purpose of the record.

The Arbitrator: Objection overruled.
Mr. Rawlins: What is that question now?

(Whereupon the question referred to was read and is as follows: Q. "What are some of those industries?")

A. The American Manganese Steel Company, the Hamilton Piano Company, the Columbia Cold Steel Company, the Benjamin Incorporated Scrap-Iron, the Victor Chemical Company, the Calumet Steel Company, the Morton Frog & Brass Works, the Armour Fertilizer Works, the Flint Coke Company, the Construction Machinery Company, the Chemical Manufacturing Company, Hartwell Brothers, the National Tea Company, Standard Lumber Company.

[fol. 68] The Arbitrator: I think that is enough.
Mr. Rawlins: That is enough. I didn't think there was so many.
The Witness: Sixty-five.
The Arbitrator: It is a good time we stopped.

Mr. Rawlins:

Q. You got sixty-five industries that are served in this yard?
A. Yes, sir.
Q. You say you are superintendent or manager of this little switch road?
A. Yes, sir.
Q. Do you know the kind or character of the shipments?
A. Yes, sir.
Q. What are they in a general way?

Mr. Horwitz: I object.
The Arbitrator: I think we better—if we could find out just what happened on that particular day, what were these engines and what were they doing, if he knows——
Mr. Horwitz: Yes. If he wants to go into what they were doing or what he was doing, that is all right.

A. They were running freight from the industries to the connecting lines, to the various railroad-, and from the various railroads to the industries.

[fol. 69] Mr. Horwitz: I object to that because the answer is too general.

The Witness: Well, I will be specific.

Mr. Horwitz: We have no objection to what the switch engines did at a certain time.

Mr. Rawlings: We don't think we need go that far.

Mr. Horwitz: I object to the question.

Mr. Rawlins: If the Court please, it is a fixed instrumentality just like a tower, just like a water tank. It is an instrumentality that is fixed and solid. It isn't an engine running back and forth, at one moment engaged in hauling interstate cars and at another moment engaged in hauling interstate cars, but it is part of the railroad, as much as the tracks are and the rails are, and all we need to do is to show that this railroad on which it is, is engaged in both inter and interstate commerce. That is all I care for, and the——

Mr. Horwitz: Are you referring to this railroad?

Mr. Rawlins: Yes. And the kind of commodities delivered to industries I do not care about. As far as I am concerned he may not have on that particular day handled interstate cars.

Mr. Horwitz: We are interested in that. You may not be, but we are.

Mr. Rawlins: I am not going to try to prove that, but [fol. 70] by this manager, the contract man between the railroad and the industries I intend to show the general character of the freight that is handled there in and out of that yard.

Mr. Horwitz: I object to the general character.

The Arbitrator: He stated on that particular day these engines were taking freight to various industries—to and from various industries and connecting with various railroads.

Mr. Cohen: He may state as of the date of the accident.

Mr. Rawlins: I will ask as of the date of the accident?

A. Yes, I will answer that, as of the date of the accident.

Mr. Rawlins: If they want the original record I will put it in, the original record of the movements on that day.

Q. Your business is what, again, so the Arbitrator will get the gist here—you are what?

A. I am general agent.

Q. And you are the man in direct charge of the handling of freight?

A. Yes, sir.

Q. You are contract man?

A. Yes.

Q. There are only how many men employed on that little road—I mean——.

The Witness: In my immediate——

[fol. 71] Mr. Rawlins: In your department?

A. I have fifteen.

Q. All told?

A. All told.

Q. Have you with you, Mr. Lottinville, a record of the movement of freight in the yard there that day?

A. Yes, I have.

Q. Is that the original record?

A. That is a copy of the original record.

Q. Made by you?

A. Made by the Chief Clerk.

Mr. Cohen: I object to the record then.

Mr. Horwitz: Yes.

Mr. Rawlins:

Q. Well, made under your supervision and direction?

A. Yes, under my supervision.

Mr. Cohen: I still object.

Mr. Rawlins:

Q. When was it made?

A. Made last Thursday.

Q. Well; now, aside from that record do you know what sort of shipments were made on that day with reference to inter and inter-state commerce?

A. All the record shows is all I can verify.

[fol. 72] Mr. Rawlins:

Q. What is the kind or character of freight that is handled in that yard generally, not on that day particularly?

A. Coal, phosphate, lumber, acid, scrap-iron, scrap rails, oils, paints, flooring, composition flooring, steel posts, machinery, groceries.

Q. Coal?

A. Coal.

Q. Now, where does the coal come from?

A. Coal originates in West Virginia, Indiana, Ohio, some Illinois coal.

Q. About what percentage of the coal that is handled there comes in from Illinois?

A. I would say—it is approximately thirty per cent the coal from Illinois, outside of West Virginia, Indiana, Ohio and Kentucky.

Q. The other commodities about what percentage originates here or elsewhere?

A. Between seventy to seventy-five percent outside of the State of Illinois.

Q. And that is the general character of the freight from day to day?

A. Yes, sir.

Q. The coal that is used in this chute that is used to fuel [fol. 73] engines?

A. Some of the coal used for the engines is from Indiana and from Kentucky.

Q. And as to lumber where does that come from?

A. All over, Louisiana, Texas, Wisconsin, Minnesota, Montana, Washington, California.

Q. None comes from Illinois?

A. I have never seen any lumber from Illinois.

Q. Iron?

A. Steel sheets come from Gary and Youngstown, Ohio.

Q. Is there much of that used?

A. There is considerable used.

Q. Where does the phosphate used by the chemical company you mentioned come from?

A. It comes from Tennessee; Mount Pleasant, Tennessee.

Q. You say about seventy-five percent of the traffic that is handled is freight from outside and twenty-five percent from inside of Illinois?

A. Approximately.

Q. These small, little engines are your regular switch engines?

A. These switch engines are not so small. I would rather not go into that mechanical end of it.

[fol. 74] Mr. Rawlins:

Q. But they are switch engines as distinguished from railroad engines?

A. Yes.

Q. About how many carloads do they haul?

A. Thirty five to forty.

Q. There has been some talk about the C. & E. I. coaling at that same bin. What are those engines used for?

A. Chicago Heights Yard, C. & E. I. yard.

Q. What sort of freight is handled in that yard?

A. The same as, practically the same as the terminal. Practically every car load we get flows through that yard.

Q. From both inside and outside of Illinois?

A. Yes.

Q. That is, the switch yard of the C. H. T. that connects with a number of other roads?

A. Yes.

Q. Name them will you?

A. The Chicago, Milwaukee & St. Paul.

Mr. Horwitz: I object to that.

Mr. Rawlins: We want to get the general situation.

Mr. Horwitz: I object to it.

The Arbitrator: I thought he named them before.

Mr. Rawlins: He didn't.

[fol. 75] The Witness: I named them?

Mr. Rawlins: Then pardon me. I don't want them again.

Mr. Horwitz: It is common knowledge.

Mr. Rawlins:

Q. The C. & E. I. runs into Indiana?

A. Indiana.

Q. And Missouri?

A. Missouri.

Q. And Illinois?

A. Illinois.

The Arbitrator: This is off the record.

(Off the record.)

Mr. Rawlins:

Q. Now, Mr. Lottinville, I take it, from what you say that, aside from the records, you could not tell one particular or any particular car movement?

A. No.

Q. And what you have here is a copy of the original record?

A. Yes, sir.

Mr. Rawlins: I offer that in evidence.

Mr. Horwitz: You are offering that in evidence?

Mr. Rawlins: Yes.

Mr. Horwitz: I object to it.

The Arbitrator: Just what are these records taken from?

A. That is taken from the shippers to switch the cars and from the connecting lines; in other words, the other [fol. 76] lines in Chicago with reference to instructions for moving the cars.

Mr. Rawlins: And does it show where they go?

A. Where they go.

Q. Where they are billed to?

A. Yes.

Q. And where to start from?

A. Where to start from.

Q. Was that freight?

A. Car load freight.

The Arbitrator: I wonder if you can go out and be examined by the doctor now?

Mr. Horwitz: Go with the lady and come back after you get through.

The Arbitrator:

Q. When they were made how were they made?

A. I ordered the Chief Clerk to copy them from the original documents in the office.

Mr. Horwitz: I object to that.

The Arbitrator: The objection will have to be sustained.

The Witness: You would have to bring in the original records. You would have to compare them.

The Arbitrator: That is common sense, but it is not legal.

The Witness: I realize that.

Mr. Rawlins: But if the Arbitrator please, so far as that [fol. 77] particular record of that day is concerned, in my opinion it does not make any difference, it is fixed just like the tracks. That is all.

Cross-examination.

By Mr. Horwitz:

Q. Mr. Lottinville, is that your name?

A. Yes.

Q. Now, how long have you been with this railroad?

A. I have been with the Chicago Heights Transfer Terminal Railroad since August 1, 1925—1927, I beg pardon, 1927.

Q. And with the C. & E. I. Railroad?

A. I am not with the C. & E. I. I am with the Chicago Heights Transfer Terminal Railroad.

Q. So you have nothing to do with the employment of this man, have you?

A. No, I have not.

Q. Did you ever give him instructions what to do?

A. So far as our office is concerned, I do.

Q. But personally you don't give any instructions?

A. No.

Q. How long since you have been with the C. & E. I.?

A. Since June 6, 1906.

Q. Did you ever go into the round-house where they have the engines?

[fol. 78] A. Yes, I walked through that roundhouse quite frequently.

Mr. Horwitz:

Q. When was the last time you were there?

A. The last time in the roundhouse?

Q. Yes.

A. Yesterday.

Q. And were you there on the 15th of July, 1929?

A. I was, yes.

Q. When did you see Thomas?

A. I saw Thomas after he was hurt.

Q. Do you know what time he got hurt?

A. I believe it was in the morning some time; I don't know exactly.

Q. On July 15th?

A. July 15th.

Q. Lottinville, when you were in that roundhouse on that day, on the 15th, how many switch engines were there?

A. In the roundhouse?

Q. Yes.

A. There was one in the roundhouse at that time I was in there.

Q. What was that engine doing there?

A. It was just laid off, doing nothing. It was a dead engine.

[fol. 79] Mr. Horwitz:

Q. How large is this roundhouse?

A. It has five stalls, engine stalls for five engines.

Q. When an engine comes in, who drives it in?

A. The crew.

Q. And they will leave it at the water plug?

A. Leave it at the water plug or leave it at the cinder-pit, or put it right in the round-house, it just depends.

Q. How long does it stay there?

A. It may stay there a couple of hours, or may stay over night.

Q. When that switch engine comes in there, it is not bound out for any purpose at all except to be watered and coaled?

A. Watered and coaled, or possibly for light repairs on the brakebeam which might have been down, which may happen to these engines.

Q. No freight comes into the roundhouse?

A. No. Roundhouses are not made for handling freight.

Q. Exactly. So that the roundhouse itself has nothing to do with the hauling of freight?

A. Yes. It has to do with freight. If you didn't have freight you wouldn't have no use for a roundhouse.

Mr. Horwitz: That is evading the question. I am asking you whether the roundhouse has anything to do with the hauling of freight?

[fol. 80] A. Yes. It links right in with the handling of freight.

Mr. Horwitz:

Q. How many under your employe?

A. Fifteen.

Q. Have you any bookkeepers?

A. Oh, we have about four.

Q. Are they directly interested in the handling of freight?

A. They had the books on freight.

Q. So they are part of interstate commerce?

A. Every employe of the railroad is connected with interstate commerce. Well, I am not legally minded, I can't answer.

Q. You answered that the roundhouse has directly to do with the hauling of freight.

Mr. Rawlins: I object. That is all obvious. You are not answering now?

A. No.

Mr. Horwitz: It isn't obvious to me. It seems that a round house is just like a garage to store cars over-night and has nothing to do with where they came from or are going to.

Mr. Rawlins: Are you asking a question?

Mr. Horwitz: I am asking a question

Mr. Rawlins: All right.

Mr. Horwitz: I am asking if his bookkeeper is under interstate——

[fol. 81] The Arbitrator: It makes no difference because we are not dealing with bookkeepers here.

Mr. Rawlins: No.

Mr. Horwitz: These engines that have been described are smaller engines than the regular engines that run between states?

A. No, I wouldn't say they are engines of the same class running between states.

Q. Is that a large engine or a small engine?

A. I can't answer as to the mechanical features of locomotives.

Q. In size?

A. No, sir.

Q. Just as large as a big freight engine?

A. It is smaller than a big freight engine; three wheel drive wheel.

Q. That little-engine that you saw that day standing idle, where had it come from, if you know?

A. Yes, sir; it had been standing there for about two years, to my knowledge. It is an engine we don't use.

Q. How many stalls did you say, five?

A. Five stalls.

Q. So that at times only four engines can come in at one [fol. 82] time when you find this in?

A. Yes, sir.

Mr. Horwitz:

Q. And how many engines were used that day of July 15, in and around the roundhouse coming there for the purpose of being coaled?

A. Well, probably five.

Q. What time did Mr. Thomas get injured if you know?

A. I don't know the exact time he was injured, but I believe it was some time in the morning.

Q. When these engines come to the roundhouse do they come with freight or without freight?

A. They come in there light.

Q. In other words, no freight at all?

A. No.

Q. When they go out they go out light also?

A. Absolutely. They don't haul any freight out of the roundhouse.

Q. Now, these engines are designated as switch engines?

A. They are switch engines.

Q. So that on the date these switch engines,—I withdraw the question. How far a distance do these switch engines run?

A. A day?

[fol. 83] Mr. Horwitz: Not a day. In a distance—in one distance, in one stretch?

A. They may run a mile. They may run half a mile or a quarter. They may run two miles.

Q. Well, the farthest?

A. I would say two miles and a quarter, that is in one run.

Q. In one run. They might make a hundred runs a day?
A. Yes, sir.
Q. I am talking about one individual run.
A. Yes, sir. Some of them will probably go—one engine will run probably eleven miles to twelve miles; that is, one run.
Q. In one run?
A. Yes.
Q. That is, around the different factories?
A. No, running from Chicago Heights to Yard Center.
Q. Where is that?
A. C. & E. I. yard. I said eleven miles. It is about eleven miles from Chicago Heights.
Q. Where is that?
A. North of Chicago Heights, about eleven miles.
Q. How far will a switch engine after it gets out of the roundhouse—will it run without picking up any freight?
A. Well, leaving the roundhouse, without picking up any [fol. 84] it runs about a mile.

Mr. Horwitz:

Q. About a mile?
A. Yes, sir.
Q. Now, what does it do after it picks up freight, would that come back to the roundhouse?
A. No. They don't come back to the roundhouse. They come back to the classification yard adjacent to the roundhouse.
Q. After they unload freight would they go for anything at all?
A. They don't unload freight.
Q. They remain as before?
A. Set? Well, how do you mean?
Q. Or sent with cars again?
A. Probably they are classified for the different industries in the classification yard.
Q. After this little engine gets some water and some coal it comes in idle again to the roundhouse?
A. Well, not at that time.
Q. Well, has it got another place where it picks up coal and water?

A. No, it wouldn't take coal or water, but maybe it was coaled by the crew during its hours of service. The crew might take an engine up there and coal it.

[fol. 85] Mr. Horwitz:

Q. And Mr. Thomas wouldn't have anything to do with that?

A. No. It just depends what engine is tied up.

The Arbitrator:

Q. What do you mean by that?

A. Tying up, coming in at the end of a run.

Mr. Horwitz:

Q. Do you know what Mr. Thomas' duties were?

A. In a general way, yes.

Q. He is classified as a laborer?

A. Yes, sir.

Q. You heard him mention that he had to sweep the office, take care of the office?

A. Yes, he has been given that extra duty.

Q. Is that your office?

A. General office.

Q. And he sweeps there and cleans it up?

A. Yes.

Q. And one duty is to clean up the roundhouse?

A. Yes. He has other men working with him; he isn't alone.

Q. How many other men?

A. He has another man that works with him during his hours of service, that was with him the day he was hurt.

Q. One of his duties was to take care of the office and sweep and clean it; another duty is to keep the roundhouse [fol. 86] clean with the other man?

A. Yes.

Mr. Horwitz:

Q. And another duty is to oil this stationary engine?

A. Now, that question—he naturally would take care of his apparatus.

Q. That is naturally one of his duties?

A. He has been doing it for years.

Q. Ten years?

A. Yes.

Q. And another duty is, when the crew isn't there on this little switch engine, to put water and coal in from the bins?

A. That is right.

Q. On July 15 or any day prior to July 15 or on that day that you—strike that out. Was he required to haul any freight?

A. Mr. Thomas never hauled any freight.

Mr. Horwitz: Exactly.

Q. And was he engaged that day in driving any engine?

A. I can't say positively that he was.

Q. But, so far as you know, he was not?

A. I can't say either way.

Q. That day do you know how much coal was in the bins [fol. 87] on July 15, when you were there?

A. No.

Mr. Horwitz:

Q. You don't know whether it was full or empty?

A. No. They generally fill them every day. They put coal in every day because night engines would consume coal.

Q. Was he employed in the repair of any engines?

A. No, sir, not to my knowledge.

Q. What is the usual time of the day for these switch engines to be coaled and watered?

A. Referring back to July, I believe the engines that Mr. Thomas coaled on that day would be in there possibly in the morning when he went to work or about two thirty in the afternoon.

Q. How many hours does a switch engine put in?

A. Generally—we generally try to keep them on an eight-hour schedule but we are not always successful, possibly eight or ten sometimes, and sometimes twelve hours a day.

Q. After they are through working where are they placed?

A. They are placed in the roundhouse generally at the bin or pit.

Q. In the roundhouse?

A. No, right on the outside of the roundhouse, on the pit.

[fol. 88] Mr. Horwitz:

Q. Are they inspected by anybody then?

A. Yes, we have machinists there to take care of them.

Q. Inspect them?

A. Yes.

Q. Aren't they usually loaded by the crew for the next day's work?

Mr. Rawlins: Loaded?

Mr. Horwitz: Loaded with coal and water.

Mr. Rawlins: Oh.

A. You mean supplied with coal and water?

Mr. Horwitz: Yes.

A. Well, they may be supplied with water and coal that evening or maybe it has to be coaled the next morning, also watered. Engines alive are considered both coaled and watered.

Q. But the usual method would be, if they are turned out for the day's work and they need water and coal, that part would be attended to at the end of the run, isn't that true?

A. Yes, at the end of the run.

Q. And then that engine would rest up until the next run or shift?

A. The next call out.

Q. These engines, therefore, do not—are not engaged—strike that out. These engines then are not used in the hauling of regular freight that is designated to it at that time?

[fol. 89] Mr. Rawlins: What is that?

The Witness: I don't understand the question.

Mr. Horwitz:

Q. Freight is usually designated to certain points or destination?

The Arbitrator: You mean assigned?

Mr. Horwitz: Assigned.

Mr. Rawlins: Billed?

Mr. Horwitz: Billed. These little switch engines are not engines that take this freight to their designated places?

A. No, sir.

Mr. Horwitz: That is all.

The Witness (continuing): Not very many of them. They do.

Redirect examination.

By Mr. Rawlins:

Q. Well, now, Counsel has used the word little with great frequency—these are regular ordinary switch engines, aren't they?

A. Yes, sir.

Q. Now, this coal chute that I have talked about, isn't in the roundhouse?

A. No, sir.

Q. How far away from the coal bin is the roundhouse?

[fol. 90] A. About three hundred feet.

Mr. Rawlins:

Q. This has a separate house of its own?

A. Yes.

Q. And this house just contains the motor and coal bin or hoisting apparatus?

A. Yes.

Q. These switch engines that have been referred to operate in the yards at Chicago Heights; that is, of the Chicago Heights Terminal?

A. Yes, they operate at the Heights yard.

Q. And one goes to Yard Center?

A. Yes, they alternate engines every third day, and they take trains from Chicago Heights yard—they take trains from the classification yard to the Heights yard and sent up there with additional cars and taken to Yard Center.

Q. Do you know about what time Mr. Thomas got hurt?

A. No, I don't know the exact time. I know it was some time in the morning.

Q. Along about noon or ten o'clock?

A. I am not positive. I only feel it was around ten o'clock.

Q. You don't know definitely?
A. There was a record but I never consulted it.

Mr. Rawlins: All right.

[fol. 91] Recross-examination.

By Mr. Horwitz:

Q. Do you know what Mr. Thomas was doing at the time he got injured?
A. No, I don't know.
Q. Did you hear?
A. Yes, sir—no; I asked Mr. Thomas before the doctor came to take him away to the hospital what he did and he said he took some grease and got underneath this motor and pushed it up and the cogs caught his hand, and pulled it into it. I told him that was a very difficult thing to do to go underneath the motor; that I think he should have used a can He said he knows; that is the way those things happen.

Mr. Horwitz: That is all.
Mr. Rawlins: That is all.

(Witness excused.)

Mr. Rawlings: Mr. Slaughter.

Whereupon H. W. SLAUGHTER took the stand as a witness in behalf of the respondent and, having been previously [fol. 92] duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rawlins:

Q. What is your name, please?
A. H. W. Slaughter.
Q. Where do you live?
A. Dalton, Illinois.
Q. Your business?
A. General foreman of the locomotive department.
Q. For whom?
A. Chicago & Eastern Illinois Railroad Company.

Q. Where?
A. Dalton.
Q. Did you have anything to do with the engines at Chicago Heights?
A. Yes, sir.
Q. Did you have anything to do with the supervision or maintenance of the coal chute and hoisting apparatus at Chicago Heights?
A. Yes, sir.
Q. Where Mr. Thomas was working?
A. Yes.
Q. Did he work directly under you?
A. Yes, sir.

[fol. 93] Mr. Rawlins:

Q. Now, with reference to that coal chute just describe that, how it looks and so forth.
A. The chute?
Q. Yes.
A. It is an upright structure with a track and a hopper. We dump coal from the coal cars and that is in turn—it is hoisted to a bin up overhead.

Mr. Rawlins: Yes.
The Witness (continuing): From there there is a connection to the locomotives.

Mr. Rawlins:

Q. What sort of locomotives?
A. Switch locomotives.
Q. Describe the different locomotives.
A. Well, four of those locomotives is what we term six-wheel switch engines. They weigh about eighty tons, twenty-one inch cylinder. The other ones that we use at the other yard is eighty-seven tons.
Q. Is that C. & E. I. one—is that a switch engine?
A. The average weight of our switch locomotives is eighty tons.
Q. In all the yards?
A. Yes, sir.
Q. This chute, how long had that been there?
A. I could not say. It was there some time previous to [fol. 94] our taking charge.

Mr. Rawlins:

Q. When did you take charge?
A. The 1st of August, 1927.
Q. And it has been in the same condition ever since?
A. Yes.
Q. Is it possible to get coal in position where you can feed it into the switch engines?
A. Yes, sir.
Q. Now, in connection with the operation of this chute, tell us about that.
A. Well, the coal is dumped from the cars into the hopper and elevated by use of a motor and machinery for that purpose into the bin.
Q. Do you remember what time of the day it was that you were notified he claimed he was hurt?
A. My report stated about ten A. M.
Q. After this coal was overhead it was dumped into the engines by whom?
A. Various employes.
Q. Whom?
A. Sometimes the engine crew and various employes.
Q. Sometimes Thomas?
A. I presume Mr. Thomas helped put it on engines.

[fol. 95] Mr. Cohen: I object.
The Witness: In fact I knew he did.
The Arbitrator: Strike the presume part out.
Mr. Rawlins: I think that is all.

Cross-examination.

By Mr. Horwitz:

Q. Just one question: What is the size of the regular freight engine that does hauling, how many tons?
A. They vary from eighty-seven tons to one hundred and fifty tons.

The Arbitrator:

Q. What is the size of these engines?
A. These are eighty tons.

Mr. Rawlins:

Q. Eighty?
A. Yes.

Mr. Horwitz:

Q. That is what you designate as small engines?
A. No, it isn't a small engine.
Q. It isn't smaller than one hundred and fifty tons?
A. Standard switch engine.
Q. But it is smaller than the one hundred and fifty tons?
A. Oh, yes.

Mr. Rawlins: Smaller than the big one, of course.

Mr. Horwitz: Do you know whether you can get the one hundred and fifty tons into this roundhouse?
A. I never tried it.

[fol. 96] Mr. Horwitz:

Q. Well, you are familiar with the roundhouse, would it go in?
A. I presume it could, yes.
Q. This bin that has been talked about that is used for storing coal?
A. Yes.
Q. He was under your direct employ, Mr. Thomas?
A. Yes.
Q. And he is a laborer?
A. Yes, a laborer.
Q. And it is his duty to clean up, keep the roundhouse clean?
A. Yes.
Q. He has nothing to do with the handling of any freight?
A. No.

Mr. Rawlins: I object to that as a conclusion.
Mr. Horwitz: Well, I am asking him a plain question.
Mr. Rawlins: I am objecting to it.
The Arbitrator: It is a conclusion.
Mr. Rawlins: Sure it is a conclusion.
The Arbitrator: He can state what he does do.

Mr. Horwitz:

Q. Does he handle any freight?

Mr. Rawlins: I object.

A. You mean handle packages of freight?
Mr. Horwitz: Yes.
The Arbitrator: He shakes his head, no.

[fol. 97] Mr. Horwitz:

Q. Do you know what he was doing at the time he got injured?

A. I wasn't present.

Mr. Horwitz: That is all.

Redirect examination.

By Mr. Rawlins:

Q. It was his duty to operate this motor and keep this coal chute full?

A. Yes, sir.

Q. And the coal put into the chute was used only for the purpose of fueling these engines?

A. Yes.

Mr. Rawlins: That is all.

Mr. Horwitz: That is all.

(Witness excused.)

Mr. Rawlins: Dr. Bohart.

Whereupon Dr. WILLIAM H. BOHART took the stand as a witness in behalf of the respondent and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rawlins:

Q. Will you state your name, please?

[fol. 98] A. William H. Bohart.

Mr. Rawlins:

Q. Doctor, you are a physician and surgeon?

A. Physician and surgeon.

Q. And you are a physician and surgeon for the Chicago & Eastern Illinois Railroad Company, the——

A. Yes.

Q. —defendant herein?

(No further response.)

Mr. Rawlins:

Q. Did you have occasion to examine Mr. Thomas, the man here, who was injured?

A. I did.

Q. Do you know what his condition was when you first saw him?

A. He had a healed injured right thumb. He had an unhealed injury to the index finger. There was considerable granulated tissue growing out of what probably was—there was a little piece of bone in the hand that was dead.

The Arbitrator:

Q. What date was that?

A. That was December 11, no, 19th of November.

Mr. Rawlins:

Q. What did you do, if anything, for him?

A. Well, we dressed it for several days and finally one day I got a little piece of bone out of the index finger about the size of—just a little piece, I think it was a little larger than the tip of this pencil (indicating), and the finger [fol. 99] healed up.

Mr. Rawlins:

Q. When did it finally heal up?

A. So far as I was concerned, December 16 was the last dressing he had.

Q. Doctor, so far as any other injury was concerned, to the arms, elbows or shoulders describe what, if any injury you found?

A. He didn't complain of any; only the hand.

Q. From the injury that you observed in his hand, the history you got, have you an opinion as to that injury, whether it will cause any permanent disability to the elbow or shoulder?

A. No. There is some from non-use. He has a certain amount of fibrosis in his finger yet, but it don't amount to anything.

Q. What about the elbow or shoulder?

A. Nothing wrong about the elbow or shoulder that I know of.

Q. That condition of the hand from non-use will that improve?

A. Very much.

Mr. Rawlins: I think that is all.

Mr. Horwitz: That is all.

(Witness excused.)

The Arbitrator: Let the record show that both sides [fol. 100] agree and stipulate that the petitioner is to be examined by the Board's physician, who is to make a report to the Arbitrator, the report to become a part of the record and the doctor shall not be subject to cross-examination.

Mr. Rawlins: Yes.

Mr. Cohen: Yes.

Mr. Rawlins: That is all.

(The report referred to by the Arbitrator is as follows—obtained from the file of the Commission:

Copy

"February 24, 1930.

"In re Joe Thomas vs. C. & E. I. Railroad—158,174

"Miss Reid, Office.

"DEAR MISS REID: This man gives the history of being injured July 15th, 1929, when the right hand was caught in some gears.

"Examination today shows an amputation of the distal phalanx of the right thumb. The amputation stump is well healed and not particularly sensitive. Motions at the phalangeal metacarpal articulation are good. There is an amputation of the distal phalanx of the 1st finger. There [fol. 101] is only about 1/3 the normal motion in the proximal articulation of this finger. The 2nd finger shows an amputation of practically the entire distal phalanx. In this finger there is also only about 1/3 the normal motion at the proximal articulation. He is able to flex the tip of the 3rd finger to within about ½ inch of the palm and the tip of the 4th finger to within about ¼ inch of the palm. Motions of the wrist are good. Motions of the elbow are good.

"Conclusions

"The temporary disability has terminated and at this time there is 50% loss of use of the right thumb; about 75% loss of use of the 1st finger; ⅔ loss of use of the 2nd finger; about 15% loss of use of the 3rd finger and about 10% loss of use of the 4th finger. The disability in the thumb is permanent but that in the other fingers should decrease slightly with further use.

"Respectfully submitted.

(Signed) Ira B. Robertson, Medical Director.

"LBR:mb."

Which were all the proceedings had at the hearing of the [fols. 102 & 103] above-entitled cause.

Transcript approved.

J. W. Horwitz, Attorneys for the Petitioner. Edward W. Rawlins, Attorney for the Respondent.

[fols. 104 & 104a] Form 18-A

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

DECISION OF ARBITRATOR—Filed Mar. 6, 1930

STATE OF ILLINOIS,
County of Cook, ss:

Notice and application for adjustment of claim having been filed in the above entitled matter, and Harriet Reid having been designated by said Commission as Arbitrator thereof, and said matter having come on to be heard before said Arbitrator at 205 W. Wacker Drive in the City of Chicago, said County and State, on the 24th day of February, 1930; and, after hearing the proofs and allegations of

the parties hereto, and having made careful inquiry and investigation of said matter and being fully advised in the premises, said Arbitrator finds:

That the petitioner and the respondent were not on the 15th day of July, 1929, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said petitioner sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act.

That the earnings of the petitioner during the year next preceding the injury were $1,474.20, and that the average weekly wage was $28.35.

That petitioner at time of injury was — years of age and had 3 children under 16 years of age.

That necessary first aid, medical, surgical and hospital services have been provided by the respondent herein.

That said cause is hereby dismissed for want of jurisdiction.

(Erie Railroad vs. Collins, 253 W. S. 790.)

Dated and entered this 6th day of March, 1930.

Harriett Reid, Arbitrator.

[fol. 105] New address: 205 W. Wacker Drive, Chicago, Ill.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, 205 W. WACKER DRIVE, CHICAGO, ILL.

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

NOTICE OF DECISION OF ARBITRATOR—March 10, 1930

To Petitioner, through J. W. Horwitz, 10 S. La Salle St., Chicago, Illinois; to Respondent, through Edward W. Rawlins, 105 S. La Salle St., Chicago, Ill., Room 920:

Take notice that on the 6th day of March, 1930, there was filed with the Industrial Commission, at Chicago, Illinois, the decision of the Arbitrator in the above entitled matter, a copy of which decision is enclosed to you herewith; and

You are further notified that unless a petition for review is filed by you with the Industrial Commission within fifteen (15) days after receipt by you of this notice and copy of such decision, and an agreed statement of the facts appearing upon the hearing before the Arbitrator or a correct transcript of evidence of the proceedings at such hearing within twenty (20) days, then and in that event the decision of the said Arbitrator shall be entered of record by this Commission as the decision of the Industrial Commission.

Dated at Chicago, Illinois, this 10th day of March, 1930.

Industrial Commission of Illinois, by Walter F. Rohm, Secretary. (Seal.)

[fols. 106 & 107] Report of medical director omitted; printed side page 100 ante.

[fols. 108 & 109] And, afterwards, to-wit, on the 13th day of March A. D. 1930, there was filed in the offices of the Industrial Commission of Illinois, by the Applicant herein, Receipt for Decision of Arbitrator, which said receipt is in words and figures as follows, to-wit:

Case Number 158,174

Received of Industrial Commission of Illinois:

1. Notice of Hearing on Arbitration.
2. Decision of Arbitrator. J. W. Horwitz.
3. Notice of Hearing on Review.
4. Decision on Review.
5. Notice of Hearing on 19 (h).
6. Dismissal Order.

Date: 3-13-30.

[fols. 110 & 111] (File Original Only. No Duplicates Required)

STATE OF ILLINOIS, INDUSTRIAL COMMISSION, 300 W. ADAMS ST., CHICAGO, ILL.

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

PETITION FOR REVIEW OF DECISION OF ARBITRATOR—Filed Mar. 18, 1930

STATE OF ILLINOIS,
County of Cook, ss:

Now comes Joe Thomas, of Chicago Heights, Ill., and respectfully petitions the Honorable Industrial Commission of the State of Illinois as follows:

That said Commission shall review the decision of the arbitrator, duly appointed according to law, in the above entitled cause, which decision of said arbitrator was filed with the Industrial Commission on the 6th day of March, 1930.

Your petitioner represents that an agreed statement of facts or correct transcript of evidence of the proceedings before said arbitrator will be filed by your petitioner as required by law.

Your petitioner further represents that said decision of the arbitrator should be reviewed by the Industrial Commission, for the following reasons, to wit (set up any proper ground for review, in accordance with Sec. 19 of the Workmen's Compensation Act): That the decision is contrary to the law and the evidence.

Your petitioner therefore prays that proper notice in accordance with the statute may be given to the parties interested herein and that a date may be set by the Honorable Industrial Commission for a hearing upon this peti-

tion for review, and that upon such hearing said Commission may modify or vacate the order and decision of the arbitrator, as in the opinion of said Commission the facts and circumstances shall warrant.

And your petitioner will ever pray.

Joe Thomas, (Employer or employee, as the case may be). J. W. Horwitz, Attorney

Address: 10 S. La Salle St.

[File endorsement omitted.]

[fols. 112 & 113] STATE OF ILLINOIS, INDUSTRIAL COMMISSION OF ILLINOIS, 205 W. WACKER DRIVE, CHICAGO, ILLINOIS

No. 158,174

JOE THOMAS, Applicant,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

MOTION FOR ORDER EXTENDING TIME—Mar. 18, 1930

The petitioner herein respectfully moves the Honorable Industrial Commission to enter an order extending the time for filing stenographic report or agreed statement of facts 30 days, in addition to time allowed by statute.

J. W. Horwitz, Attorney for Joe Thomas.

Dated this 18th day of March, 1930.

Approved March 18th, 1930.

Industrial Commission of Illinois, by C. A. Pense, Member.

Filed with the Industrial Commission March —, 1930, by Walter F. Rohm, Secretary.

[fols. 114 & 115] STATE OF ILLINOIS, BEFORE THE INDUSTRIAL COMMISSION

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

NOTICE OF HEARING ON REVIEW—April 26, 1930

Pet., thru J. W. Horwitz, 10 So. La Salle St., Chicago, Illinois; Resp., thru Edward W. Rawlins, 105 So. La Salle St., Chicago, Illinois:

You and each of you are hereby notified that the above entitled cause is set for hearing on review before the Industrial Commission of Illinois on Monday, the 19th day of May, A. D. 1930, at the hour of 2:00 o'clock P. M., at 205 W. Wacker Drive, in the city of Chicago, Illinois, at which time and place you may appear and be heard in said cause and present to the Industrial Commission such additional testimony as you may desire, upon giving to the opposite party five days' notice of the substance of such additional testimony

Dated at Chicago, Illinois, this 26th day of April, 1930.

Industrial Commission of Illinois, by Walter F. Rohm, Secretary.

[fols. 116 & 117] STATE OF ILLINOIS, BEFORE THE INDUSTRIAL COMMISSION

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

NOTICE OF HEARING ON REVIEW—May 20, 1930

Pet., thru J. W. Horwitz, 10 S. La Salle St., Chicago, Illinois; Resp., thru Edward R. Rawlins, 105 So. La Salle St., Chicago, Ill.:

You and each of you are hereby notified that the above entitled cause is set for hearing on review before the Indus-

trial Commission of Illinois, on Thursday, the 26th day of June, A. D. 1930, at the hour of 1:30 o'clock P. M., at 205 W. Wacker Drive, in the city of ——, Illinois, at which time and place you may appear and be heard in said cause and present to the Industrial Commission such additional testimony as you may desire, upon giving to the opposite party five days' notice of the substance of such additional testimony.

Dated at Chicago, Illinois, this 20th day of May, 1930.

Industrial Commission of Illinois, by Walter F. Rohm, Secretary.

[fol. 118] [File endorsement omitted]

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

STATEMENT OF PROCEEDINGS ON REVIEW—Filed Aug. 6, 1930

Be it remembered that heretofore, to-wit, on the 26th day of June, A. D. 1930, the above entitled cause came on for hearing on review before Commissioner Peter Grieve, Jr., at the office of the Industrial Commission, Chicago, Illinois.

Whereupon the following proceedings were had, and this record made.

Appearances:

Mr. J. W. Horwitz and Mr. B. E. Cohen, Attorneys for Petitioner.

Mr. Edward R. Rawlins, Attorney for Respondent.

Abe Levin, Reporter.

[fols. 119 & 120] The Commissioner: Is there any additional testimony?

Mr. Rawlins: No; I think the facts are clear enough in the record so they cover our controversy.

Mr. Horwitz: On the record and some argument.
The Commissioner: All right; proceed.

(Whereupon a discussion was had by respective counsel, not for the record.)

Which were all the proceedings had and record made at this hearing on review.

Transcript correct.
J. W. Horwitz, J. S. Bloom, Attorney for Petitioner.
Edward W. Rawlins, Attorney for Respondent.

[fol. 121] BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

No. 158,174

JOE THOMAS, Petitioner,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

DECISION—July 8, 1930

Petition to review the award of the Arbitrator having been filed by the Petitioner herein, and due notice given, the above entitled cause came on for hearing before the Commission, at Chicago, Illinois, on the 26th day of June, 1930.

Upon a consideration of the record herein, and further proceedings had on review, the Commission is of the opinion the award of the Arbitrator is erroneous; said award is therefore hereby set aside, and the following decision is hereby substituted in its stead:

The Commission finds:

First. That the petitioner and respondent were on the 15th day of July, 1929, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said petitioner sustained accidental injuries which did arise out of and in the course of the employment; that notice of said accident was given said respondent and claim for compensation on account thereof

was made on said despondent within the time required under the provisions of said Act.

[fol. 122] Second. That the earnings of the petitioner during the year next preceding the injury were $1474.20, and that the average weekly wage was $28.35.

Third. That Petitioner at time of injury had three children under sixteen years of age.

Fourth. That necessary first aid, medical, surgical and hospital services have been provided by the respondent herein.

Fifth. That as a result of said accidental injury the petitioner was temporarily totally incapacitated for work for a period of 27 2/7 weeks.

Sixth. That as a further result of said injury, the petitioner sustained the permanent loss of use of 50% of the right thumb, 75% of the right first finger, 66⅔% of the second finger, 15% of the third finger, and 10% of the fourth finger.

It is therefore ordered by the Commission that the respondent pay to the petitioner compensation at the rate of $18.00 per week for a period of 27 2/7 weeks, that being the period of temporary total incapacity for work.

It is further ordered by the Commission that the respondent pay to the petitioner the further sum of $18.00 per week for a period of 94 1/12 weeks, for the reason that injury sustained caused the permanent loss of use of 50% of the right thumb, 75% of the first finger, ⅔ of the 2nd finger, 15% of the third finger, and 10% of the Fourth [fol. 123] finger.

Bond for removal of this cause to the Circuit Court by the respondent is hereby fixed at the sum of $2400.00, and the probable cost of the record to be filed as a return to writ of certiorari is the sum of $30.00.

Dated this 8th day of July, A. D. 1930.

P. Grieve, Jr., Clarence S. Piggott, H. H. Willoughby, Industrial Commission of Illinois.

[fols. 124 & 125] And afterwards, to-wit, on the 11th day of July, A. D. 1930, there was filed in the offices of the Industrial Commission of Illinois, by the Respondent herein, receipt for decision on review, which said receipt is in words and figures as follows, to-wit:

Case Number: 158,174

Received of Industrial Commission of Illinois:
1. Notice of Hearing on Arbitration.
2. Decision of Arbitrator.
3. Notice of Hearing on Review.
4. Decision on Review. Edward W. Rawlins, M. Agle.
5. Notice of Hearing on 19 (h).
6. Dismissal Order.

Date: Month: July; day, 11, 1930.

[fols. 126 & 127] STATE OF ILLINOIS:

INDUSTRIAL COMMISSION OF ILLINOIS, 205 W. WACKER DRIVE, CHICAGO, ILLINOIS

No. 158,174

JOE THOMAS, Applicant,

vs.

CHICAGO & EASTERN ILLINOIS R. R. Co., Respondent

MOTION FOR ORDER EXTENDING TIME—July 25, 1930

The respondent herein respectfully moves the Honorable Industrial Commission to enter an order extending the time for filing stenographic report on review or agreed statement of facts thirty days, in addition to time allowed by statute.

Edward W. Rawlins, Attorney for Respondent.

Dated this 25th day of July, 1930. (Writ.)

[fol. 128] WRIT OF CERTIORARI UNDER WORKMEN'S COMPENSATION ACT—Filed July 29, 1930

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to Industrial Commission, Greeting:

Whereas, it has been represented to our Circuit Court of Cook County, by the Præcipe or Petition of Chicago & Eastern Illinois R. R. Co., filed in said Court, that on the 8th day of July, A. D. 1930, in a certain suit or proceeding, then pending before you, a decision or award has been rendered by you in favor of Joe Thomas and against said Chicago & Eastern Illinois R. R. Co. for $18.00 per week for a period of 27-2/7 weeks, and $18.00 per week for a period of 94 1/12 weeks;

And the said Chicago & Eastern Illinois R. R. Co. having filed a Præcipe or Petition for a Writ of Certiorari and we being willing that said cause should be brought before our said Circuit Court;

Do Therefore Command You that, without delay, you certify to our said Circuit Court of Cook County, a transcript of the decision or award and other proceedings had before you in said cause on or before the third Monday of August, A. D. 1930.

To the Sheriff of said County to execute and return in due form of law.

Witness Thomas O. Wallace, Clerk of our said Circuit Court of Cook County, and the Seal of said Court at Chicago, this — day of July, A. D. 1930.

—— ——, Clerk.

[File endorsement omitted.]

[fols. 129 & 130] Secretary's certificate to foregoing transcript omitted in printing.

[fols. 131 & 132] IN CIRCUIT COURT OF COOK COUNTY

No. B-203,860

CHICAGO & EASTERN ILLINOIS R. R. Co., Petitioner,

vs.

JOE THOMAS and INDUSTRIAL COMMISSION OF ILLINOIS, Respondents

JUDGMENT—Dec. 31, 1930

This cause coming on to be heard on writ of certiorari upon the application of Chicago & Eastern Illinois R. R. Co., to review the decision and award of the Industrial Commission of the State of Illinois, and the Court having inspected the record returned by the said Industrial Commission in response to the writ of certiorari, and having heard the arguments of counsel, and being fully, advised in the premises, finds no errors of law appearing on the said record, and,

It is, therefore, ordered, adjudged and considered by the Court, that the decision of the Industrial Commission of the State of Illinois entered by the said Commission on the 8th day of July, A. D. 1930, be and the same is hereby in all things confirmed, to which action of the Court the Petitioner herein, the Chicago & Eastern Illinois R. R. Co., excepts.

Enter. H. Sterling Pomeroy, Judge of the Circuit Court of Cook County.

Dated this 31st day of December, A. D. 1930.

Compared.

[fols. 133 & 134] IN SUPREME COURT OF ILLINOIS

No. 20704. B 203,860

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY,
Petitioner,

v.

INDUSTRIAL COMMISSION OF ILLINOIS et al.; JOE THOMAS,
Respondent

Application for Writ of Error to Circuit Court Cook

ORDER DENYING WRIT OF ERROR—Filed in Circuit Court Feb. 27, 1931

February 18, A. D. 1931.

And now on this day the Court having duly considered the petition for a Writ of Error herein as well as the record and abstract filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a Writ of Error herein.

And it is further considered by the Court that the said respondent recover of and from the said Petitioner costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois and keeper of records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said Supreme Court at Springfield, in said State, this 26th day of February in the year of our Lord one thousand nine hundred and Thirty-one.

Chas. W. Vail, Clerk of the Supreme Court. (Seal.)

Compared.

[fol. 135] IN CIRCUIT COURT OF COOK COUNTY

[Title omitted]

ORDER STAYING PROCEEDINGS—Mar. 4, 1931

This cause coming on to be heard on motion of Chicago & Eastern Illinois R. R. Co., petitioner in the above entitled cause (Respondent before the Industrial Commission) and the Court being advised in the premises, it is hereby ordered that all further proceedings in said cause be and the same are hereby stayed until the time within which said petitioner, Chicago & Eastern Illinois R. R. Co., is required to file its petition for certiorari in the Supreme Court of the United States to review the Judgment and order of this Court in said cause shall have expired without any such petition having been filed or if filed until same has been passed upon by the Supreme Court of the United States.

Enter.

H. Sterling Pomeroy, Judge.

[fol. 136] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 137] Judgment of Supreme Court omitted; printed side page 133 ante.

[fol. 138] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

And now comes Chicago & Eastern Illinois R. R. Co., petitioner herein, by Edward W. Rawlins, its counsel, and in connection with its petition for a writ of certiorari, says that in the record, proceedings, and in the final order and judgment aforesaid, manifest error has intervened to the prejudice of the petitioner, and this petitioner here assigns the following errors, to wit:

1. The Industrial Commission of the State of Illinois was [fol. 139] without jurisdiction of the case.

2. The Circuit Court of Cook County, Illinois erred in not finding that the claimant Joe Thomas (respondent herein) was at the time he sustained the injuries in question engaged in work in interstate commerce.

3. The Industrial Commission of Illinois erred in not finding that the claimant Joe Thomas (respondent herein) was at the time he sustained the injuries in question engaged in work in interstate commerce.

4. The Circuit Court of Cook County, Illinois erred in not finding that the Industrial Commission of Illinois was without jurisdiction of the case.

5. The Circuit Court of Cook County, Illinois erred in not holding that the Industrial Commission of Illinois was without jurisdiction of the case because the undisputed evidence shows that the claimant Joe Thomas (respondent herein) was at the time he sustained the injuries in question, engaged in work in interstate commerce.

6. The finding and order of the Circuit Court of Cook County, Illinois affirming the decision of the Industrial Commission of Illinois are contrary to the evidence in the case.

7. The finding and order of the Circuit Court of Cook County, Illinois affirming the decision of the Industrial Commission of Illinois are contrary to the law.

8. The Circuit Court of Cook County, Illinois erred in not reversing the decision of the Industrial Commission of [fol. 140] Illinois.

9. The Circuit Court of Cook County, Illinois erred in not quashing the proceedings, record and award of the Industrial Commission of Illinois.

Chicago & Eastern Illinois R. R. Co., by Edward W. Rawlins, Its Counsel. Edward W. Rawlins, Counsel for Chicago & Eastern Illinois R. R. Co., Petitioner.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1931

The petition herein for a writ of certiorari to the Circuit Court of Cook County, State of Illinois, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1275)